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KETUA PENGARAH JABATAN PENDAFTARAN NEGARA, MALAYSIA v. NIVETHAH THAMAYANDIRAN & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
MOHD NAZLAN GHAZALI JCA
B AHMAD FAIRUZ ZAINOL ABIDIN JCA
LIM HOCK LENG JCA
[CIVIL APPEAL NOS: B-01(NCvC)(A)-72-01-2024
& B-01(NCvC)(A)-100-02-2024]
23 OCTOBER 2025

C

Abstract – *(i) Where a child is illegitimate, the word 'parents' in s. 2(1)(b) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003) ('ARIE') cannot apply to a father and can only refer to a mother. This is precisely because* D *according to s. 111 of the Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (EN 2/2003), the putative father of an illegitimate child cannot, in law, be considered as the child's father. If a child is born out of wedlock and the mother is a Muslim, then s. 2(1)(b) of the ARIE would be fulfilled and the illegitimate child is considered a* E *Muslim; (ii) As long as one is a Muslim by identification, whether he practices or not, or whether he continues to believe in the faith or not, he is no less legally identified as 'a person professing the religion of Islam'. Any application for a declaration that a person is never a Muslim must necessarily be construed as a request for a declaration that one is no* F *longer a Muslim, which is a renunciation case. In adherence to art. 121(1A) of the Federal Constitution, it is the Syariah Court which has the jurisdiction to hear and determine an application for a declaration that a person is no longer a Muslim, also in accordance with s. 61(3)(b)(x) of the ARIE.*

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CONSTITUTIONAL LAW: *Jurisdiction – Courts – Determination of religious faith – Illegitimate children born to Hindu father and Muslim mother – Whether s. 111 of Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (EN 2/2003) ('IFLE') applied to deny ascription of paternity – Whether father, and* H *his religion, for all intents and purposes, disqualified – Whether s. 2(1)(b) of Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003) ('ARIE') fulfilled when one parent is Muslim – Whether illegitimate children Muslims by virtue of s. 2(1)(b) of ARIE – Whether illegitimate children and mother persons 'professing the religion of Islam' – Whether fell within* I *scope of all laws made by Selangor State Legislative Assembly under Ninth Schedule, State List, List II, item 1 of Federal Constitution, including ARIE and IFLE –*

Whether application for renunciation of Islam fell within jurisdiction of Syariah Court – Whether civil courts have no jurisdiction to grant declaration that persons were no longer Muslims – Federal Constitution, art. 121(1)(A) – Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003), ss. 61(3)(b)(x), 74(2)

ISLAMIC LAW: *Jurisdiction – Syariah court – Determination of religious faith – Illegitimate children born to Hindu father and Muslim mother – Whether s. 111 of Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (EN 2/2003) ('IFLE') applied to deny ascription of paternity – Whether father, and his religion, for all intents and purposes, disqualified – Whether s. 2(1)(b) of Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003) ('ARIE') fulfilled when one parent is Muslim – Whether illegitimate children Muslims by virtue of s. 2(1)(b) of ARIE – Whether illegitimate children and mother persons 'professing the religion of Islam' – Whether fell within scope of all laws made by Selangor State Legislative Assembly under Ninth Schedule, State List, List II, item 1 of Federal Constitution, including ARIE and IFLE – Whether application for renunciation of Islam fell within jurisdiction of Syariah Court – Whether civil courts have no jurisdiction to grant declaration that persons were no longer Muslims – Federal Constitution, art. 121(1)(A) – Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003), ss. 61(3)(b)(x), & 74(2)*

The respondents filed an originating summons ('OS') at the High Court, praying for, *inter alia*, a declaration that (i) the respondents' religion is, and has always been, a Hindu; (ii) consequently, the respondents are entitled to be issued identity cards by the National Registration Department ('NRD') in recognition of the above fact; and (iii) all laws made by the Selangor State Legislative Assembly under Ninth Schedule, List II, item 1 of the Federal Constitution ('FC') including the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003) ('ARIE') do not apply to the respondents or affect the respondents. The key facts encircled the lineage of four different generations. The respondents' maternal grandmother was Safiah, a Muslim, as she was the daughter of Othman and Kalsumi, who were both Muslims. Safiah had a relationship with Genasan who was a Hindu and from this relationship, Anizah was born out of wedlock and was an illegitimate child. Anizah, in turn, had a relationship with Thamayandiran who was a Hindu. As a result of the relationship, the respondents were also born illegitimate. Anizah was the respondents' biological mother. The respondents contended that they were of the Hindu religion, had never professed the religion of Islam, were raised as Hindus, had been declaring their religion as Hindu throughout their lives, and that as a matter of general reputation, they have always been regarded as Hindus. The respondents asserted that they sincerely have faith in the beliefs and doctrines of the Hindu religion, which they wished to retain and to continue professing and practicing the Hindu religion, and that it was their

A constitutional right under art. 11 of the FC to profess and practice the religion of their choice. Both the appellants, the NRD (Appeal 72) and the Majlis Agama Islam Selangor ('MAIS') (Appeal 100) argued that the respondents were Muslims by virtue of s. 2(1)(b) of the ARIE which defines a Muslim as a person either or both of whose parents were at the time of the person's
B birth, a Muslim. On the other hand, the respondents' primary stance, which found favour with the High Court, was that the respondents were not Muslims because they were born illegitimate, which they argued rendered s. 2(1)(b) altogether inapplicable, in light of s. 111 of the Islamic Family Law Enactment (State of Selangor) 2003 (Selangor) (EN 2/2003) ('IFLE') and the
C decision of the Federal Court in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* ('*Rosliza*'). The principal issue for determination in these appeals was whether the two respondents were Muslims by virtue of s. 2(1)(b) of the ARIE.

Held (allowing appeals)

D **Per Mohd Nazlan Ghazali JCA delivering the judgment of the court:**

(1) The important decision of the Federal Court in the case of *Rosliza* held that where a child is illegitimate, the word 'parents' in s. 2(1)(b) of the ARIE cannot apply to a father and can only refer to a mother. According to s. 111 of the IFLE, the putative father of an illegitimate
E child cannot, in law, be considered as the child's father. If legitimacy is an issue – meaning the child is illegitimate – the application of s. 2(1)(b) must be made subject to s. 111 of the IFLE. It does not and cannot mean that if the child is illegitimate, s. 2(1)(b) of the ARIE becomes entirely inapplicable. It was clear beyond peradventure that
F s. 2(1)(b) cannot simply be said to be inapplicable whenever a child is illegitimate because s. 111 of the IFLE is only concerned with the paternity, not maternity of a child. It provides that the paternity of a child cannot be ascribed to the child's biological father because the child was born legitimate. (paras 27-31)

G **(2)** Section 111 of the IFLE which operates in the event of the illegitimacy of the child to disqualify the father in terms of ascription of paternity, does not concern the mother at all. This did not, however, automatically mean the child is a Muslim under s. 2(1)(b) of the ARIE because the condition therein is either of the parents must
H be a Muslim. If the father, and his religion, for all intents and purposes disqualified in the context of s. 2(1)(b), then reliance could only be potentially made on the religion of the mother. If she is a Muslim, then the child will be construed as a Muslim. If the mother is not, the child will not be so construed. (para 33)

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(3) In these appeals, whilst s. 111 applies to deny such ascription of paternity of the two respondents to their biological father, Thamayandiran, this did not matter to s. 2(1)(b) of the ARIE at all since he was not a Muslim to begin with. But this did not mean s. 2(1)(b) is rendered inapplicable just because the respondents were illegitimate. Here, the father could not be considered as a parent to fulfil the requirement for the respondents to be considered as Muslims under s. 2(1)(b) because of either one or two, or both reasons – first, the father was a non-Muslim and secondly, if he were a Muslim, he would have been disqualified under s. 111 of the IFLE. (paras 35 & 36)

(4a) Section 2(1)(b) of the ARIE speaks of either one of the parents. The father may be ineligible to be considered in the scheme of s. 2(1)(b) but it does not at all follow that the respondents' mother was similarly to be disregarded. If their mother, Anizah, was a Muslim, then s. 2(1)(b) of the ARIE would be fulfilled and the respondents were to be considered as Muslims. Anizah's mother (Safiah) who was the respondents' grandmother was undoubtedly a Muslim. This meant that one parent of Anizah was a Muslim and this already fulfilled s. 2(1)(b). But s. 111 on the paternity of Anizah must also be considered. Since she was born illegitimate, Genasan could not in law be construed as the father of Anizah. On top of that, Genasan was also not a Muslim, in any event. Nevertheless, excluding Genasan out of s. 2(1)(b) of the ARIE still left Safiah, a Muslim, as another parent of Anizah, which clear effect was to render Anizah (the respondents' mother) to be a Muslim because plainly at the time of Anizah's birth, Anizah's mother, Safiah, was a Muslim, fulfilling the requirement of the definition of a Muslim in accordance with s. 2(1)(b) of the ARIE. (paras 37-39)

(4b) As their mother (Anizah) was a Muslim, the two respondents – Nivethah and Swetha – were Muslims at the time of their birth by virtue of the clear words of s. 2(1)(b) precisely because either one of their parents – in this case meaning Anizah, was also at the time of her birth, a Muslim. Again, applying s. 111 of the IFLE on paternity, since the two respondents were born illegitimate children, their father, Thamayandiran could not, in law, be considered as the father of the respondents, quite apart from the fact he was not a Muslim. Accordingly, it followed that since the respondents' mother (Anizah) and the respondents were Muslims by virtue of s. 2(1)(b) of the ARIE, they were, as a matter of fact, persons 'professing the religion of Islam' falling within the scope of item 1, List II, State List, Ninth Schedule of the FC. Thus, all laws made by the Selangor State Legislative Assembly under item 1, List II, State List, Ninth Schedule of the FC, including the ARIE, as well as the IFLE, applied to the respondents' mother (Anizah) and the two respondents. (paras 40-44)

(5) Given the facts and circumstances of the instant case, and the finding that the respondents were Muslims under s. 2(1)(b) of the ARIE, their application for a declaration that their religion is and has always been Hindu could only be construed as a declaration that they were no longer Muslims – or a renunciation case, which thus fell within the jurisdiction of the Syariah Court. Syariah Courts may only exercise jurisdiction over a person on two conditions: (i) the person shall profess the religion of Islam, which is a matter of jurisdiction *rationae personae* or the litigant's legal persona; (ii) Syariah Courts must also ensure they have jurisdiction over the subject matter as expressly enumerated in the said item 1 of the State List which is jurisdiction *ratioane materiae* – or subject matter jurisdiction. As such, in this case, both *ratione personae* and *ratione materiae* have been shown to be satisfied to warrant the Syariah Courts being seized of the requisite jurisdiction in respect of the application brought by the two respondents, in adherence to the constitutional scheme in this country. (paras 58, 59, 60 & 64)

(6) The respondents' contention that they were of the Hindu religion and were raised as Hindus, even if true, did not change their legal identity as Muslims by virtue of s. 2(1)(b) of the ARIE. The respondents were legally identified as persons 'professing the religion of Islam' as per item 1 of the State List even though they might not believe in the Islamic faith and did not practice Islamic teachings. As long as one is a Muslim by identification, whether he practices or not, he is no less legally identified as a 'person professing the religion of Islam' (*Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal*). (paras 72 & 74)

(7) The respondents' application for a declaration that they were never Muslims must necessarily be construed as a request for a declaration that they were no longer Muslims. This was thus a renunciation case and not an *ab initio* case. As Muslims who are desirous of leaving the religion of Islam, the remedy that would potentially be available to the respondents was to seek the declaration that they were no longer Muslims (despite being Muslims on their birth by operation of law under s. 2(1)(b) of the ARIE) from where the requisite jurisdictional authority is constitutionally vested in – which was in the Syariah Courts. The essence of the remedy that the respondents were seeking should therefore be applied for in the Syariah Courts, in line with the requirements of the FC, and specifically pursuant to the above-mentioned s. 61(3)(b)(x) of the ARIE as well as s. 74(2) of the same State Enactment. By virtue of art. 121(1A) of the FC, all civil courts in this country, undoubtedly have no jurisdiction to grant the declaration that the respondents were no longer Muslims. (paras 84, 85 & 96)

Case(s) referred to:

Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal [2024] 5 CLJ 855 FC ***(refd)***

Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener) [2020] 4 CLJ 731 FC ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(dist)***

Legislation referred to:

Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (EN 1/2003), ss. 2(1)(b), 61(3)(b)(x), 74(2)

Births and Deaths Registration Act 1957, ss. 13, 27(3)

Evidence Act 1950, s. 35

Federal Constitution, arts. 11, 74, 121(1A), Ninth Schedule, List I, State List, List II, item 1, List III

Islamic Family Law (State of Selangor) Enactment 2003 (Selangor) (EN 2/2003), ss. 10(2), 111

Law Reform (Marriage and Divorce) Act 1976, s. 3(3)

National Registration Regulations 1990, reg. 21

(Civil Appeal No: B-01(NCvC)(A)-72-01-2024)

For the appellant - Mohammad Sallehuddin Md Ali; FC

For the respondents - Gurdial Singh Nijar, Abraham Au Tian Hui & Lim Sze Han; M/s Yeoh Mazlina & Partners

(Civil Appeal No: B-01(NCvC)(A)-100-02-2024)

For the appellant - Kamaruzaman Arif & Sofiah Omar; M/s Kamaruzaman Arif & Sofiah

For the respondents - Gurdial Singh Nijar, Abraham Au Tian Hui & Lim Sze Han; M/s Yeoh Mazlina & Partners

[Editor's note: For the High Court judgment, please see Nivethah Thamayandiran & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara, Malaysia & Anor [2024] CLJU 56 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Nazlan Ghazali JCA:

Introduction

[1] The principal question in these appeals pertained to the religion of the two respondents. This in turn necessitated examination of whether the definition of a Muslim in the Administration of the Religion of Islam (State of Selangor) Enactment 2003 – which under s. 2(1)(b) provides that a person, at the time of his or her birth is a Muslim if either of his or her parents is a Muslim – is applicable if the person was born illegitimate.

[2] After having examined the appeal records and considered the submission by the parties, we arrived at the conclusion that the decision of the High Court which had answered the above question in the negative – in

that, the respondents are not Muslims, and that s. 2(1)(b) was not applicable in this case – could not be sustained. We therefore set aside that decision and allowed the appeals by the two appellants.

[3] This judgment contains the full reasons for our decision in these appeals.

Key Background Facts

[4] There were two appeals before us. These were heard together, and both of which were against a single decision of the High Court in Shah Alam which had ruled in favour of the two respondents, against the first defendant, Ketua Pengarah Jabatan Pendaftaran Negara Malaysia, now the appellant in Civil Appeal No: B-01(NCvC)(A)-72-01/2024 ("Appeal 72") ("the NRD") and Majlis Agama Islam Selangor who was the second defendant at the High Court, presently the appellant in Civil Appeal No: B-01(NCvC)(A)-100-02/2024 ("Appeal 100") ("MAIS").

[5] In essence, it may be simply stated that the respondents had filed the action at the High Court as they disagreed with the NRD issuing them with NRIC identifying them as Muslims. The High Court had in its decision granted the reliefs in the originating summons ("the OS") filed by the two respondents, namely Nivethah a/p Thamayandiran ("Nivethah") and Swetha a/p Thamayandiran ("Swetha") – who are sisters, as prayed therein, as follows:

(i) a declaration that the respondents' religion is, and has always been, Hindu;

(ii) a declaration that, consequently, the respondents are entitled to be issued identity cards by the appellant (NRD) in recognition of the above fact;

(iii) a declaration that all laws made by the Selangor State Legislative Assembly under Ninth Schedule, State List, List II, item 1 of the Federal Constitution, including the Administration of the Religion of Islam (State of Selangor) Enactment 2003 do not apply to the respondents or affect the respondents;

(iv) an order in the nature of *mandamus* directing the appellant (NRD) to issue identity cards to the respondents which reflect the said declarations; and

(v) costs of RM10,000 to be paid by each of the appellants.

The Issue For Determination

[6] The principal issue for determination in these appeals is whether the two respondents are Muslims by virtue of s. 2(1)(b) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ("the ARIE 2003") which defines a Muslim as a person either or both of whose parents were at the time of the person's birth, a Muslim.

[7] The two respondents, however, it is not in dispute, were born out of wedlock. The application of this definition in s. 2(1)(b) of the ARIE 2003 must therefore be examined by having regard to the provision in s. 111 of the Islamic Family Law Enactment (State of Selangor) 2003 (Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003) ("the IFLE 2003") which denies the ascription of paternity to the father of a child who is born illegitimate.

The Applicable Law

[8] The entirety of s. 2(1) of the ARIE 2003 on the definition of a Muslim reads as follows:

> Interpretation
>
> ……
>
> "Muslim" means:
>
> (a) a person who professes the religion of Islam;
>
> (b) **a person either or both of whose parents were at the time of the person's birth, a Muslim**;
>
> (c) a person whose upbringing was conducted on the basis that he was a Muslim;
>
> (d) a person who is commonly reputed to be a Muslim;
>
> (e) a person who has converted to the religion of Islam in accordance with s. 108; or
>
> (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be oral or written;
>
> and includes Majlis Agama Islam Selangor which is established under s. 4 of this Enactment;
>
> (emphasis added)

[9] In other words, s. 2(1)(b) provides that a Muslim is a person who either or both of whose parents were at the time of the person's birth, a Muslim.

[10] It is pertinent to appreciate that any question concerning a declaration of an individual no longer being a Muslim is within the jurisdiction of the Syariah High Court pursuant to s. 61(3)(b)(x) of the ARIE 2003, the entirety of which section reads:

> Jurisdiction of Syariah High Court
>
> 61 (1) A Syariah High Court shall have jurisdiction throughout the State of Selangor and shall be presided over by a Syariah High Court Judge.
>
> (2) Notwithstanding subsection (1), the Chief Syarie Judge may sit as a Syariah High Court Judge and preside over such Court.

(3) The Syariah High Court shall:

(a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under the Syariah Criminal Offences Enactment (Selangor) 1995 or under any other written law for the time being in force which prescribes offences against the precepts of the religions of Islam and may impose any punishment provided for the offence; and

(b) *in its civil jurisdiction, hear and determine all actions and proceedings if all the parties to the actions or proceedings are Muslims and the actions or proceedings relate to*:

(i) betrothal, marriage, ruju', divorce, annulment of marriage (fasakh), nusyuz, or judicial separation (faraq) or any other matter relating to the relationship between husband and wife;

(ii) any disposition of or claim to property arising out of any of the matters set out in subparagraph (i);

(iii) the maintenance of dependants, legitimacy, or guardianship or custody (hadhanah) of infants;

(iv) the division of, or claims to, harta sepencarian;

(v) wills or gifts made while in a state of *marad-almaut*;

(vi) gifts *inter vivos*, or settlements made without adequate consideration in money or money's worth by a Muslim;

(vii) wakaf or *nazr*;

(viii) division and inheritance of testate or intestate property;

(ix) the determination of the persons entitled to share in the estate of a deceased Muslim or the shares to which such persons are respectively entitled;

(x) *a declaration that a person is no longer a Muslim*;

(xi) a declaration that a deceased person was a Muslim or otherwise at the time of his death;

(xii) administration of mosques and surau; and

(xiii) other matters in respect of which jurisdiction is conferred by any written law.

(emphasis added)

[11] In addition, s. 74(2) of the same Enactment states that a declaration that a Muslim is no longer a Muslim can only be done by the Syariah Courts. It reads as follows:

Jurisdiction does not extend to non-Muslims

74 (1) No decision of the Syariah Appeal Court, Syariah High Court or Syariah Subordinate Court shall involve the right or the property of a non-Muslim.

(2) For the avoidance of doubt, it is hereby declared that **a Muslim shall at all times be acknowledged and treated as a Muslim unless a declaration has been made by a Syariah Court that he is no longer a Muslim.**

(emphasis added)

[12] Now, before proceeding any further, it is apposite that we answer the fundamental question, *albeit* undisputed, as to why this court applies the definition of a Muslim, and considers the above-stated provisions as found in the ARIE 2003.

[13] The short but overarching answer is art. 121(1A) of the Federal Constitution which clearly states that the civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[14] This key constitutional provision needs no reminding, and it reads thus:

PART IX THE JUDICIARY

Article 121. Judicial power of the Federation

121. (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:

...

(1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

...

[15] On the critical query as to what then are matters that fall within the remit of the Syariah Court, the answer must be in art. 74 of the Federal Constitution, which crucially introduces the subject matter of Federal and State laws, with the delineation that Parliament can make laws for the Federation on matters listed in the Federal List, State Legislatures can make laws on matters enumerated in the State List (List II set out in the Ninth Schedule), while both Parliament and State Legislatures can make laws on matters listed in the Concurrent List (List I or List III set out in the Ninth Schedule).

[16] In turn, and no less importantly, the State List in the Ninth Schedule states that among the matters included therein are Islamic law, personal and family law of person professing the religion of Islam. This division of legislative power in art. 74 means that the States have exclusive authority over specific matters such as not only Islamic law but also land, water and Local Government, among others.

[17] Significantly, List II of the Ninth Schedule not only provides for matters pertaining to Islamic law, but that it also identifies specific aspects of the administration of Islamic law, including, pertinent for present purposes, the issue of legitimacy. That much is clear from the following:

List II - State List

1. Except with respect to the Federal Territories of Kuala Lumpur and Labuan, **Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to** succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, **legitimacy**, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue, mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organisation and procedure of Syariah courts, which shall have jurisdiction only over person professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.

(emphasis added)

Rival Contentions Of Parties

[18] Both the appellants argued that the respondents are Muslims by virtue of s. 2(1)(b) of the ARIE 2003 because their mother is a Muslim. Section 111 of the IFLE 2003, they contended, did not affect such conclusion.

[19] On the other hand, the respondents' primary stance, which found favour with the High Court is that the respondents are not Muslims because they were born illegitimate, which they argued rendered s. 2(1)(b) altogether inapplicable, in light of s. 111 of the IFLE 2003 and the decision of the Federal Court in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301, as contained in the leading judgment written by Her Ladyship Tengku Maimun (Chief Justice).

Analysis And Findings of this Court

The Factual Matrix

[20] Now, the facts of the instant case. These are largely undisputed and primarily based on the affidavit evidence of the parties, which included critical information such as records of birth register as well as documents and declarations made to the National Registration Department.

[21] The key facts encircle the lineage of four different generations. The respondents' maternal grandmother is Safiah binti Othman ("Safiah"), whom the appellants maintained is a Muslim. This is because she is a

daughter of Othman Perumal bin Abdullah and Kalsumi who are both Muslims. Safiah had a relationship with Genasan a/l AJ Karuppiah ("Genasan") who is a Hindu. From this relationship, Anizah was born out of wedlock. She is an illegitimate child.

[22] Anizah in turn had a relationship with Thamayandiran a/l N Kanniaseelan ("Thamayandiran") who is a Hindu. As a result of the relationship, the respondents were also born illegitimate. Anizah is thus the respondents' biological mother.

[23] A plain application of s. 2(1)(b) of the ARIE 2003 would therefore suggest that the respondents are Muslims if either of their parents is a Muslim. Their father, Thamayandiran is certainly not, and the question then turns on whether their mother, Anizah is.

[24] However, in order to ascertain if Anizah herself is a Muslim, the same question must be asked – which is whether either of Anizah's parents is a Muslim to render Anizah fall within the scope of s. 2(1)(b) of the ARIE 2003.

[25] Furthermore, since the respondents are illegitimate, as is their mother, Anizah too, the application of this s. 2(1)(b) of the ARIE 2003 ought also to be considered in light of s. 111 of the IFLE 2003 which provides that the paternity (nasab) of a child can be established in his father only if the child was born legitimate.

[26] This important provision of the IFLE 2003 reads as follows:

> 111. Where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage or within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, and the woman not having remarried, the nasab or paternity of the child is established in the man, but the man may, by way of *li'an* or imprecation, disavow or disclaim the child before the court.

[27] This s. 111 of the IFLE 2003 provides that the paternity of a child can only be established in his father if the child is born legitimate. In this connection it is imperative to note that the important decision of the Federal Court in the case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Ano*r [2021] 3 CLJ 301 held that where a child is illegitimate, the word "parents" in s. 2(1)(b) of the ARIE 2003 cannot apply to a father and – as we understand it – can only refer to a mother.

[28] This is precisely because according to s. 111 of the IFLE 2003, the putative father of an illegitimate child cannot, in law, be considered as the child's father. As mentioned earlier, the High Court in this case holds a different view on the implication of illegitimacy on s. 2(1)(b) of the ARIE 2003, consistent with that held by the respondents, which is that since the respondents were born illegitimate, regard ought no longer to be had to s. 2(1)(b) of the ARIE 2003.

[29] In our view, and it certainly bears emphasis, that if legitimacy is not an issue, s. 111 of the IFLE 2003 is entirely irrelevant to s. 2(1)(b). If, however, legitimacy is an issue – meaning the child is illegitimate – the application of s. 2(1)(b) must be made subject to s. 111 of the IFLE 2003.

[30] It does not and cannot mean that if the child is illegitimate, s. 2(1)(b) of the ARIE 2003 becomes entirely inapplicable, as now contended by the respondents, based wholly on their interpretation of certain passages from the judgment of the Federal Court in *Rosliza*.

[31] We state that it is clear beyond peradventure that s. 2(1)(b) cannot simply be said to be inapplicable whenever a child is illegitimate because s. 111 of the IFLE 2003 is only concerned with the paternity, not maternity of a child. It provides that the paternity of a child cannot be ascribed to the child's biological father because the child is born illegitimate. Nothing substantively more than that.

[32] The case of *Rosliza* is the clear authority for the proposition that if a child is illegitimate and seeks to assert that he or she is a Muslim under s. 2(1)(b) by relying on the child's biological father being a Muslim, s. 111 of the IFLE 2003 will apply to disentitle any such ascription of the child's paternity to his or her father. The religion of the child's putative father could not as a result be ascribed to the child. The Federal Court in *Rosliza* declared that since the plaintiff in that case was born out of wedlock, although her biological father is a Muslim, s. 111 of the IFLE 2003 applied to the plaintiff's father in that case, which had the effect of removing him, in law, from any ascription of paternity *vis-à-vis* the plaintiff child.

[33] In other words, the words "either of the parents" can only in such a situation where the child is illegitimate, refer to the mother. Section 111 of the IFLE 2003 which operates in the event of the illegitimacy of the child to disqualify the father in terms of ascription of paternity, does not concern the mother at all. This does not however automatically mean the child is a Muslim under s. 2(1)(b) of the ARIE 2003 because the condition therein is either of the parents must be a Muslim. If the father, and his religion, is for all intents and purposes disqualified in the context of s. 2(1)(b), then reliance could only be potentially made on the religion of the mother. If she is a Muslim, then the child will be construed as a Muslim. If the mother is not, the child will not be so construed.

[34] That was exactly the situation in *Rosliza*. The plaintiff there was born out of wedlock. Her father is a Muslim whilst her mother, a Buddhist, is obviously not. If not for s. 111 of the IFLE 2003, the child would have been ruled a Muslim under s. 2(1)(b) because there, either of her parents – in that case, her father, is a Muslim. However, s. 111 of the IFLE 2003 applied to

deny ascription of paternity of the child to the father. That left only the other parent – her mother, who however is not a Muslim. As a result, the Federal Court ruled that the child is in law not a Muslim since the requirements of s. 2(1) of the ARIE 2003 were not met.

[35] In these appeals before us, however, crucially, whilst s. 111 applies to deny such ascription of paternity of the two respondents to their biological father – Thamayandiran, this does not matter to s. 2(1)(b) of the ARIE 2003 at all since he is not a Muslim to begin with. But this, as mentioned earlier, does not mean s. 2(1)(b) is rendered inapplicable just because the respondents are illegitimate.

[36] Here, the father cannot be considered as a parent to fulfil the requirement for the respondents to be considered as Muslims under s. 2(1)(b) because of either one or two, or both reasons – first, the father is a non-Muslim anyways and secondly if he were a Muslim, he would have been disqualified under s. 111 of the IFLE 2003.

[37] Section 2(1)(b) of the ARIE 2003, we must stress, speaks of either one of the parents. The father may be ineligible to be considered in the scheme of s. 2(1)(b), but it does not at all follow that the respondents' mother is similarly to be disregarded. In short, if their mother, Anizah, is a Muslim, then s. 2(1)(b) of the ARIE 2003 would be fulfilled and the respondents are to be considered as Muslims.

[38] As such, the pivotal question is – is Anizah, the mother of the respondents a Muslim under s. 2(1)(b) of the ARIE 2003? We are satisfied that Anizah's mother (Safiah), who is the respondents' grandmother is undoubtedly a Muslim. This means that one parent of Anizah is a Muslim and this already fulfils s. 2(1)(b). But, s. 111 on the paternity of Anizah must also be considered. Since she was born illegitimate, Genasan cannot in law be construed as the father of Anizah. On top of that Genasan is also not a Muslim, in any event.

[39] Nevertheless, excluding Genasan out of s. 2(1)(b) of the ARIE 2003 still leaves Safiah, a Muslim, as another parent of Anizah which clear effect is to render Anizah (the respondents' mother) to be a Muslim because plainly at the time of Anizah's birth, Anizah's mother – Safiah is a Muslim, fulfilling the requirement of the definition of a Muslim in accordance with s. 2(1)(b) of the ARIE 2003.

[40] Similarly, as their mother (Anizah) is a Muslim, the two respondents – Nivethah and Swetha are Muslims at the time of their birth by virtue of the clear words of s. 2(1)(b) precisely because either one of their parents – in this case meaning, Anizah, is also at the time of her birth, a Muslim.

Again, applying s. 111 of the IFLE 2003 on paternity, since the two respondents are born illegitimate children, their father, Thamayandiran cannot in law, be considered as the father of the respondents, quite apart from the fact he is not a Muslim, rendering this point moot in any event.

[41] The conclusion, we reiterate, was the reverse in the case of *Rosliza* because none of the provisions of s. 2(1) of the ARIE 2003 applied to the plaintiff in that case. Section 2(1)(b) could not define the plaintiff in that case a Muslim because her mother is a Buddhist and because as she is also illegitimate, paternity could not be ascribed to her biological father, despite him being a Muslim.

[42] In other words, the expression "parent" in s. 2(1)(b) in this case cannot refer to the father. Regardless, the definition of a Muslim in s. 2(1)(b) still applies since the status of the other parent – the respondents' mother, Anizah – is unaffected, and since Anizah has earlier been determined to be a Muslim, we must conclude that Nivethah and Swetha are Muslims under the definition of a Muslim under s. 2(1)(b) of the ARIE 2003. We reiterate that this result was achieved because at the time of their birth, the respondents' mother (Anizah) is a Muslim.

[43] Accordingly, it follows that since the respondents' mother (Anizah) and the respondents – Nivethah and Swetha, are Muslims by virtue of s. 2(1)(b) of the ARIE 2003, they are, as a matter of fact, persons "professing the religion of Islam" falling within the scope of item 1, List II, State List, Ninth Schedule of the Federal Constitution.

[44] It must also mean that all laws made by the Selangor State Legislative Assembly under item 1, List II, State List, Ninth Schedule of the Federal Constitution, including the ARIE 2003, as well as the IFLE 2003 apply to the respondents' mother (Anizah) and the two respondents.

The High Court And Respondents' Interpretation Of Rosliza

[45] Section 2(1)(b) of the ARIE 2003 in respect of the word "parents" does not include the putative father of an illegitimate person as he cannot, in law, pursuant to s. 111 of the IFLE 2003 be considered the person's father. That, in our view, is the effect of s. 111 on s. 2(1)(b) of the ARIE 2003 as can be appreciated from the judgment in *Rosliza*.

[46] As such, we cannot agree with the finding of the High Court to the extent that *Rosliza* ruled that s. 2(1)(b) is totally inapplicable when the child is illegitimate.

[47] The respondents relied on certain specific pronouncements of the Federal Court in *Rosliza* to justify their argument – accepted by the High Court – in that in the instant case, s. 2(1)(b) of the ARIE 2003 simply did not apply since the respondents were illegitimate.

[48] There were apparently two such passages, as so highlighted by learned counsel for the respondents before us. The first reads as follows: A

> [65] The necessary implication upon a holistic construction of IFLE 2003 against s. 2 of the ARIE 2003 therefore suggests that 'parents', in s. 2 of the ARIE 2003, refers only to the parents of legitimate children. Reason being, if s. 111 of the IFLE 2003 not only renders a child illegitimate but also bars the ascription of paternity to the said child, then it stands to reason that the putative father cannot, in law, be considered the child's father. This is the first reason why the plaintiff cannot be considered a Muslim simply by virtue of s. 2(b) of the ARIE 2003. B

[49] The second reads as follows: C

> [70] In conclusion, the following issues in respect of Question 2 are clear. Firstly, the plaintiff is an illegitimate child. There is no proof of marriage of her parents at the time she was born. The plaintiff cannot be deemed a Muslim simply by virtue of s. 2(b) ARIE 2003 on the premise that 'either' or 'both' of her parents are Muslim. For the reasons aforementioned, although Ibrahim had stated certain particulars in his application for an identity card on behalf of the plaintiff or even in his own application for a new identity card, those particulars are not proof. Even if they are, they appear to materially conflict with the evidence on record. D

[50] Based on the above passage from *Rosliza*, the contention of the respondents is that the word "parents" in s. 2(1)(b) of the ARIE 2003 can only refer to parents of legitimate children. We accept that this is what is stated in the first-mentioned passage as above. But, that statement must surely be read in the context of the entire judgment. E

[51] And when that is done, the following observations are unmistakably pertinent. First, if read and applied literally, such an interpretation as advanced by the respondents would mean that a child born to Muslim parents out of wedlock does not and can never satisfy s. 2(1)(b), and assuming the child does not fall under any of the other paragraphs of s. 2(1) of ARIE 2003 on a definition as a Muslim, that child cannot be considered as a Muslim under the State Enactment. We do not think this could have been intended by the State Legislature. F G

[52] Secondly, *Rosliza* enunciated the above passages in the manner it was done precisely because the factual matrix in that case focused on the issue whether reliance could be placed on the plaintiff's father – who is a Muslim – to render the plaintiff a Muslim under that s. 2(1)(b). Section 111 of the IFLE 2003 was applied to remove his paternity. This meant neither of the plaintiff's parents were a Muslim, because the status of the plaintiff's mother as a non-Muslim was never in doubt from the start. This was why, in our view, *Rosliza*, in both of the above passages stated that s. 111 of the IFLE 2003 bars the ascription of paternity, and that the putative father cannot, in law, be considered the child's father. H I

[53] Indeed the plaintiff in *Rosliza* specifically sought for, among others, a declaration that the word "parents" in s. 2(1)(b) of the ARIE 2003 did not include the putative father of an illegitimate child. That was the context of the focus of the Federal Court, since there was no dispute that the plaintiff's mother is Buddhist and reliance could not be made on her religion with regard to s. 2(1)(b) of the ARIE 2003. *Rosliza* therefore cannot be said to have the effect of the automatically disapplying s. 2(1)(b) of the ARIE 2003 to an illegitimate person.

[54] In addition, thirdly, the second passage referred to above which concluded that the plaintiff cannot be deemed a Muslim simply by virtue of s. 2(1)(b) of the ARIE 2003 on the premise that 'either' or 'both' of her parents are Muslim is in fact absolutely on point. This is because reliance on 'either' (let alone 'both') would have been legally ineffective as one parent, the mother is a non-Muslim and the other, the father (despite being a Muslim) had his paternity denied by s. 111 of the IFLE 2003. This point, we should add, is made even clearer in the following parts of the judgment of the Federal Court in *Rosliza*:

> [113] *On the evidence, it has been decided that the plaintiff is illegitimate, that her mother was never a Muslim and that under s 111 of the IFLE 2003, the religion of her putative father cannot be ascribed to the plaintiff. Accordingly, the plaintiff cannot be a Muslim by virtue of s 2(b) of the ARIE 2003.*
>
> (emphasis added)

[55] Moreover, fourthly, the ruling of the High Court that s. 2(1)(b) of the ARIE 2003 does not apply if the child is illegitimate does not sit comfortably with the fact that despite finding that the plaintiff in *Rosliza* is an illegitimate child, the Federal Court in that case proceeded to analyse whether her mother is a Muslim, in order to assess whether the plaintiff is also rendered a Muslim by virtue of s. 2(1)(b) of the ARIE 2003.

[56] And further, given the finding that her mother is a non-Muslim, such that reliance could not be made on the religion of her mother under s. 2(1)(b) of the ARIE 2003, the court then dealt with the status of the other parent – the father – whose status however was affected by s. 111 of the IFLE 2003, which removed his paternity over the plaintiff, thus ultimately rendering the requirements of s. 2(1)(b) of the ARIE 2003 not fulfilled *vis-à-vis* the plaintiff in *Rosliza*.

[57] All this does nothing but more than amply demonstrate that s. 2(1)(b) of the ARIE 2003 can be applied to illegitimate person to the extent that the word "parents" therein refers only to the illegitimate person's biological mother. If the High Court were correct in its ruling that the illegitimacy of a person would automatically render the entirety of s. 2(1)(b) inapplicable, the Federal Court in *Rosliza* could have simply pronounced to such effect, without having to proceed any further, as it did, to scrutinise and determine whether the mother, and later the father, is a Muslim.

Renunciation Cases Fall Within Jurisdiction Of Syariah Courts

[58] Accordingly, given the facts and circumstances of the instant case, and the finding that the respondents – Nivethah and Swetha are Muslims under s. 2(1)(b), their application for a declaration that their religion is and has always been Hindu could only be construed as a declaration that they are no longer Muslims – or a renunciation case, which thus falls within the jurisdiction of the Syariah Court.

[59] It is worthy of emphasis that as enunciated by the Federal Court in *Rosliza*, Syariah Courts may only exercise jurisdiction over a person on two conditions. These are first, the person shall profess the religion of Islam, which is a matter of jurisdiction *ratione personae* or the litigant's legal persona. This has been determined to be the case for Nivethah and Swetha.

[60] Secondly, Syariah Courts must also ensure they have jurisdiction over the subject matter as expressly enumerated in the said item 1 of the State List which is jurisdiction *ratione materiae* – or subject-matter jurisdiction.

[61] The Federal Court in *Rosliza* further explained in the following terms:

> [85] The dispute before us relates to the question of one's constitutional identity. It therefore necessitates constitutional interpretation of something which only the superior courts of this country have the right to address. It is only when one's faith is the main subject-matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts. In this regard, there is a significant distinction between 'one who no longer professes the religion of Islam' on the one side, and 'one who never professes the religion of Islam', on the other …".

[62] It is beyond dispute that under art. 121(1A) of the Federal Constitution, the civil courts have no jurisdiction on any matter falling within the jurisdiction of the Syariah Court. As stated earlier, matters that fall within the jurisdiction of the Syariah Court are in art. 74 of the Federal Constitution, where the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, List II as set out in the Ninth Schedule) or the Concurrent List. Among the matters falling within the State List in the Ninth Schedule are Islamic law, personal and family law of person professing the religion of Islam, including legitimacy.

[63] We reiterate that moreover, s. 61(3)(b)(x) of the ARIE 2003 provides for the jurisdiction of the Selangor Syariah High Court to hear and determine an application for a declaration that a person is no longer a Muslim. Further, s. 74(2) of the same Enactment too states that a Muslim shall at all times be acknowledged and treated as a Muslim unless a declaration has been made by a Syariah Court that he is no longer a Muslim.

[64] As such, in this case, both *ratione personae* and *ratione materiae* have been shown to be satisfied to warrant the Syariah Courts being seized of the requisite jurisdiction in respect of the application brought by the two respondents, in adherence to the constitutional scheme in this country.

Definition Of Muslim On Legal Identity Determines Whether One Professes The Religion Of Islam As Per Item 1 Of The State List

[65] It is also pertinent to observe that in determining that a person is one professing the religion of Islam as stated in the Federal Constitution (the jurisdiction *ratione personae* point), the Civil Courts apply the definition of a Muslim as adumbrated in s. 2(1) of the ARIE 2003 or the similar provisions found in the enactments in the other States.

[66] Like in *Rosliza*, the instant case also examined s. 2(1)(b) of the ARIE 2003. On this point, the Federal Court in *Rosliza* stated as follows:

> [114] What remains in this analysis is whether the plaintiff is a 'Muslim' under any of the other limbs of s 2 of the ARIE 2003. The provision, minus paragraph (b), provides:
>
> ...
>
> [122] *In the circumstances, as none of the provisions of s. 2 of the ARIE 2003 apply to the plaintiff's case, the natural conclusion one is compelled to draw is that the plaintiff is NOT, as a matter of fact, a person 'professing the religion of Islam' as per Item 1 of the State List. This is because there is no proof that she is a Muslim by original faith*.
>
> (emphasis added)

[67] It is also a clear pronouncement of the Federal Court in *Rosliza* that once it is established that the subject-matter of the suit is one which falls within the jurisdiction of the Syariah Courts, art. 121(1A) of the Federal Constitution dispossesses the civil courts of the jurisdiction *ratione materiae* (subject-matter jurisdiction) such as, in this case, the subject-matter of renunciation, which concerns persons who despite being Muslims by original faith, no longer have faith or believe in the religion of Islam.

[68] In contrast, in *ab initio* cases, where the person has never been a Muslim, the issue before the court is not one of faith but of one's identity under the Federal Constitution, specifically whether the constitutional phrase 'professing the religion of Islam' is fulfilled to begin with, a determination falling under the powers of the civil courts.

[69] Tengku Maimun (Chief Justice), for the Federal Court in *Rosliza* importantly stated thus:

> [108] The case is no different here. At the risk of repetition, if a matter concerns an *ab initio* case, that is, the question whether a person is in the first place a 'person professing the religion of Islam' it necessarily concerns a question regarding one's identity under the FC which in turn

necessitates constitutional interpretation. This is because the phrase 'persons professing the religion of Islam' is a constitutional term. Accordingly, the civil courts are empowered, indeed, duty-bound to adjudicate the matter. It is only in renunciation cases where one already professes or proclaims to profess the religion of Islam (irrespective of whether they actually practise the faith) with the subsequent decision to change what they profess, that the matter is removed to the jurisdiction of the Syariah Court. The distinction drawn from the cases of *Lina Joy* (*supra*) and *Azmi* (*supra*) illustrates the difference. Whether it is an *ab initio* case or a renunciation case will require a careful examination of the factual matrix of the case.

Evidence The Respondents Are Practicing Hindus

[70] We are cognisant of the respondents' contention that they are of the Hindu religion, have never professed the religion of Islam, were raised as Hindus, have been declaring their religion as Hindu throughout their lives whenever they are required to make such declaration, and that as a matter of general reputation, they have always been regarded as Hindus. The respondents asserted that they sincerely have faith in the beliefs and doctrines of Hindu religion, which they wish to retain and to continue professing and practicing Hindu religion, and that it is their constitutional rights under art. 11 of the Federal Constitution to profess and practice the religion of their choice.

[71] In short, they maintained that all laws made by the Selangor State Legislative Assembly under the Ninth Schedule, State List, List II, item 1 of the Federal Constitution, including the ARIE 2003 do not apply to the respondents or affect them because they were never Muslims in the first place.

[72] Under the law however, and given the above analysis, these claims of the respondents, even if true, do not change their legal identity as Muslims by virtue of s. 2(1)(b) of the ARIE 2003. This is because Nivethah and Swetha are legally identified as persons "professing the religion of Islam" as per item 1 of the State List even though they might not believe in the Islamic faith and do not practice Islamic teachings.

[73] For this reason it is also irrelevant for the respondents to submit that based on evidence, they in fact profess and practise the religion of Hindu or that the appellants failed to prove that the respondents profess and practise the religion of Islam instead.

[74] As clearly held by the Federal Court in *Rosliza* and more recently in its majority decision in *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* [2024] 5 CLJ 855, as long as one is a Muslim by identification, whether he practises or not, or whether he continues to believe in the faith or not, he is no less legally identified as a "person professing the religion of Islam".

[75] Tengku Maimun (Chief Justice) explained it lucidly in the following terms:

> [83] Article 11(1) of the FC guarantees the right to profess and practice one's religion. The conjunction "and" in art. 11(1) suggests that it governs more than mere professing. It extends to how one identifies oneself or how one may be identified with a specific religion and the right to also determine one's own level of devotion to his or her belief. However, item 1 of the State List singularly uses the word "professing". Contrasting art. 11(1) with item 1 of the State List, it is plain that the latter was deliberately more narrowly worded to exclude the requirement of "practice". Thus, so long as one is a Muslim by identification whether he practises or not, or whether he continues to believe in the faith or not, he is no less legally identified as a "person professing the religion of Islam."

[76] The case of *Dahlia Dhaima* was more one of conversion of a minor into Islam. However, the important observations of His Lordship Abang Iskandar PCA therein are equally applicable to the present appeals, as follows:

> [60] Other than that, I found that the majority had rigorously analysed the facts and circumstances of the case as required by *Rosliza* in determining whether Dahlia was "never a Muslim" or "no longer a Muslim". In this regard, it would be pertinent to recall, as it was correctly found by the majority of the Court of Appeal in that, for as long as one professes the religion of Islam, one is legally identified as a Muslim, irrespective of one's degree of faith and practice of the Islamic teachings. With respect, I agree. Paragraph 112 of the majority judgment is worth reproducing, like so:
>
> > [112]… As stated earlier, *Rosliza* established that a Muslim by identification would be legally identified as a "person professing the religion of Islam" regardless of whether she practises or not, or whether she continues to believe in the faith or otherwise. Section 2(c) of the Administration of Islamic Law (Federal Territories) Act 1993 is an example which provides for an interpretation of a Muslim by identification, thus becoming a "person professing the religion of Islam" notwithstanding it concerns less with one's religious practice and degree of faith but more on considerations on one's background and upbringing".

[77] In these appeals before us, critical information is contained in the affidavit dated on 29 September 2022 affirmed by Dato' Ruslin bin Jusoh, the Director General of the NRD – the appellant in Appeal 72 herein, which was filed in opposition to the declarations sought in the OS by the respondents. In the birth register for Safiah, the certified copy of an extract of which was exhibited to this affidavit of Dato' Ruslin, her religion is stated as Islam, as is that of her father, Othman Perumal and as well as that in

respect of her mother, Kalsumi. In another exhibit, a statutory declaration affirmed by Safiah on 9 February 2010, whilst she did state that her daughter, Anizah was raised by the latter's aunt as a Hindu, but in the same declaration, Safiah categorically admitted that she herself is a Muslim.

[78] Not only that. In the exhibit on her statement to the registration officer of the NRD recorded under reg. 21 of the National Registration Regulations 1990 on 28 October 2015, Safiah again confirmed she is a Muslim even though she admitted that Anizah's father, Genasan had never converted into the religion of Islam and that Anizah was raised by the latter's relative from the age of one.

[79] Indeed, based on the assertions made by both Genasan and Anizah themselves – which are largely not inconsistent – in documents such as declarations and statements available to the NRD, a number of key observations could be made. First, Anizah was born out of wedlock; secondly, her father Genasan never converted into Islam; thirdly, her mother Safiah did not raise Anizah; and fourthly Anizah was raised as a Hindu.

[80] However, it cannot be emphasised enough that for the purpose of ascertaining the religion of Anizah under the law, especially in the scheme enshrined in the Federal Constitution, and for present purposes, as detailed out in s. 2(1)(b) of the ARIE 2003, what is centrally critical must be the religion of her parents at the time of her birth. Gehasan, her biological father is not a Muslim. Safiah binti Othman, her mother, on the other hand, is irrefutably one.

[81] For completeness, it should be stated that the respondents in their replies to the affidavits for the appellants, as can be seen in the affidavits affirmed by Nivethah dated 4 November 2022, 11 November 2022 and 30 August 2023, merely dealt with the crucial issue of the religious status of Safiah, their grandmother, as a Muslim, including in respect of the documentary evidence to such effect, by making the averments that their mother Anizah had never met Safiah after the former's birth (until more recently) and that Anizah had been raised as a Hindu, as were the respondents, and also that as children born out of wedlock, all of Anizah and the two respondents are not subject to the abovementioned relevant Selangor State Enactments.

[82] We should also mention that the High Court did not in its grounds of judgment examine the above exhibits and affidavit evidence as it had accepted that Safiah is a Muslim but decided that s. 2(1)(b) of the ARIE 2003 had no application to Anizah since she was born out of wedlock, without more.

[83] As such, the fact of the legal status of Safiah as a Muslim, whom has always been one, necessarily including at the time of the birth of Anizah, remains unassailable. It hardly needs clarifying that the respondents' contention that their mother did not meet and was never in contact with her biological parents is entirely irrelevant to the applicability of s. 2(1)(b) of the ARIE 2003.

[84] Accordingly, as Muslims who are desirous of leaving the religion of Islam, presumably for the same reasons they contended here that they are not Muslims, the remedy that would potentially be available to Nivethah and Swetha is to seek the declaration that they are no longer Muslims (despite being Muslims on their birth by operation of law under s. 2(1)(b) of the ARIE 2003) from where the requisite jurisdictional authority is constitutionally vested in – which is in the Syariah Courts.

[85] The essence of the remedy that Nivethah and Swetha are seeking should therefore be applied for in the Syariah Courts, in line with the requirements of the Federal Constitution, and specifically pursuant to the above-mentioned s. 61(3)(b)(x) of the ARIE 2003 as well as s. 74(2) of the same State Enactment. We emphasise that by virtue of art. 121(1A) of the Federal Constitution, all civil courts in this country, the High Court in Shah Alam included, undoubtedly have no jurisdiction to grant the declaration that the sisters are no longer Muslims.

The Issue Of Non-Registration Of Customary Marriage

[86] The respondents also argued that they were never Muslims under the definition set out in the ARIE 2003 because their parents' marriage was never registered with the Islamic authorities. The respondents maintained that their mother – Anizah and their father, Thamayandiran were married under a Hindu traditional religious ceremony on 1 September 2001.

[87] Again, this is irrelevant to the question whether they were Muslims in accordance with the definition of Muslim under s. 2(1)(b) of the ARIE 2003 in the context of professing the religion of Islam under the Federal Constitution.

[88] We instead agree with the learned Federal Counsel that the marriage could not in any event be construed as a lawful marriage. This is since as a Muslim from the time of her birth, Anizah could not have legally married a non-Muslim. This is clearly stated in s. 10(2) of the IFLE 2003 that no woman shall marry a non-Muslim.

[89] In addition, s. 3(3) of the Law Reform (Marriage and Divorce) Act 1976 too provides that the Act shall not apply to a Muslim or to any person who is married under Islamic law, and no marriage of one of the parties which professes the religion of Islam shall be solemnised or registered under that Act.

The Issue Of The Birth Certificates Stating The Religion Of Hindu

[90] The issue of the respondents' birth certificate reflecting their religion as Hindu is in our view less than material because whilst this is a relevant fact under s. 35 of the Evidence Act 1950 concerning the relevancy of the entry in public record made in performance of duty, birth certificates are not conclusive (in the same manner as argued by the respondents that Anizah's new identity card showing her religion as "Islam" is not necessarily determinative), and it is also noted that the respondents' father did state that during the birth registration of the respondents, their mother had used her old identification card as opposed to the My-Kad issued to her.

[91] The NRD in this case had in fact issued to the respondents their NRIC reflecting their religion as Islam, but they did not agree and refused to accept or collect the same from the NRD, which led to the instant OS at the High Court, to begin with.

[92] As such, the respondents' arguments concerning the registration of Hindu religion in their birth certificates is similarly devoid of merit given their status as Muslims. These certificates mentioned the religion of Hindu because the respondents' parents furnished such information in the application forms for the registration of the respondents' births pursuant to s. 13 of the Births and Deaths Registration Act 1957, not to mention that their mother, Anizah too had chosen in that application to submit her old identity card which did not contain the word "Islam" (instead of submitting the more recently issued identity card which does contain the word "Islam").

[93] Anizah and Thamayandiran were in the first place responsible under the said s. 13 of the Births and Deaths Registration Act 1957 to provide the requisite information to the NRD. They chose to furnish the information as they had done. Section 13 states as follows:

> Provisions as to father of illegitimate child
>
> 13. Notwithstanding anything in the foregoing provisions of this Act, in the case of an illegitimate child, no person shall as father of the child be required to give information concerning the birth of the child, and the Registrar shall not enter in the register the name of any person as father of the child except at the joint request of the mother and the person acknowledging himself to be the father of the child, and that person shall in that case sign the register together with the mother.

[94] The Federal Court in the case of *Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener)* [2020] 4 CLJ 731 held that the function of the Births and Deaths Register is to record facts relevant to the birth. It does not purport to conclusively establish the truth of the contents of a birth certificate.

[95] As correctly submitted by the learned Federal Counsel, any correction of the wrong information such as on religion cannot be made by the NRD without any application submitted by the respondents or their parents under s. 27(3) of the Births and Deaths Registration Act 1957, which reads as follows:

> Correction of errors and alteration in register
>
> 27. (1) No alteration in any register shall be made except as authorized by this Act.
>
> (2) Any clerical error which may from time to time be discovered in any register may be corrected by the Superintendent-Registrar, in such manner as the Registrar-General shall direct.
>
> (3) *Any error of fact or substance* in any register may be corrected by entry (without any alteration of the original entry) by the Registrar-General upon payment of the prescribed fee and *upon production by the person requiring such error to be corrected of a statutory declaration setting forth the nature of the error and the true facts of the case, and made by two persons required by this Act to give information concerning the birth*, still-birth or death with reference to which the error has been made, or in default of such persons then by two credible persons having knowledge to the satisfaction of the Registrar-General of the truth of the case; *and the Registrar-General may if he is satisfied of the facts stated in the statutory declaration cause such entry to be certified* and the day and the month and the year when such correction is made to be added thereto ...
>
> (emphasis added)

Conclusion

[96] In light of the foregoing analysis and reasons, given the determination, based on evidence, that the respondents are already Muslims, in that they were born as Muslims by virtue of s. 2(1)(b) of the ARIE 2003, their application for a declaration that they were never Muslims must necessarily be construed as a request for a declaration that they no longer are Muslims. This is thus a renunciation case and not an *ab initio* case.

[97] As such, contrary to the decision of the High Court, in adherence to art. 121(1A) of the Federal Constitution, it is the Selangor Syariah High Court which has the jurisdiction to hear and determine an application for a declaration that a person is no longer a Muslim, also in accordance with s. 61(3)(b)(x) of the ARIE 2003.

[98] In light of the flawed ruling by the High Court that s. 2(1)(b) of the ARIE 2003 is not applicable to the respondents, its consequent determination that the respondents are Hindus, which then led to the granting of the declarations and other reliefs as sought by the respondents in their OS, have therefore all been made in error, are untenable and must thus be set aside.

[99] We therefore are unanimously of the view that the above-stated appealable errors more than justify our appellate intervention to set aside the order of the High Court and accordingly to allow the appeals by the two appellants in Appeal 72 and Appeal 100, respectively.

[100] We however make no order in respect of costs.